

FILED  
for Roanoke  
MAY 09 2005

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

JOHN F. CORCORAN, CLERK

BY: [Signature] DEPUTY CLERK

JERMEL ANTHONY COLEMAN,	)	CIVIL ACTION NO. 7:05CV00125
	)	CRIM. ACTION NO. 3:02CR00069-001
Petitioner,	)	
	)	
v.	)	<u>MEMORANDUM OPINION &amp; ORDER</u>
	)	
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	JUDGE JAMES H. MICHAEL, JR.

The court has received petitioner's *pro se* motion for reconsideration of the court's order, filed April 20, 2005. On April 6, 2005, petitioner requested that the court reduce his sentence because it was imposed in violation of *United States v. Booker*, 125 S. Ct. 738 (2005). On April 20, 2005, the court denied that motion.

In his motion for reconsideration, petitioner asserts that 18 U.S.C. § 3582(c)(2) gives the court power to reduce his sentence in light of *Booker*. Section 3582(c)(2) provides that a court can modify a sentence "in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o). . . ." In this case, the Sentencing Commission has not lowered the sentencing range for the defendant's crime. Therefore, this statutory provision does not give the court authority to modify the petitioner's sentence.

In addition, the court is not aware of any other statute that would give the court authority to reduce the petitioner's sentence. Finally, *Booker* does not give the court the

power to modify a sentence in a case where final judgment has already been entered and the time for appeal has expired. *See United States v. Comarovschi*, 2005 U.S. Dist. LEXIS 3999 (W.D. Va. March 15, 2005).

It is accordingly this day

ADJUDGED, ORDERED, AND DECREED

that petitioner's motion for reconsideration, filed May 2, 2005, shall be, and it hereby is, DENIED.

The Clerk of the Court hereby is directed to send a certified copy of this Order to all counsel of record and to the *pro se* defendant.

ENTERED:

  
Senior United States District Judge

5/9/05  
Date